ITR No. 25 of 1995

27.11.2007 Present: Ms. Vandana Kuthiala, vice counsel for the applicant/ petitioner.

Mr. Vishal Mohan, counsel for the respondent.

The following question has been referred for the opinion of this Court:

> "1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in allowing deduction u/s 80J on the capital employed without reducing the proportionate liability of head office incurred in respect of units in which deduction u/s 80J was claimed.?"

The brief facts are that the assessee had five units including the units of liquor bottling plant and television factory. The aforesaid two units were not eligible for purposes of deduction U/S 80J. In respect of the other three units, deduction was held to be allowable but the assessing officer reduced certain liabilities from the total assets of the head office on proportionate basis. The assessee had only reduced the current liability whereas the assessing officer found it necessary to ascertain the proportionate liability of the head office in respect of the secured and unsecured loans used for the purpose of the units. This is how claim U/S 80J was allowed at Rs.50,732/- only.

The assessee filed an appeal which was rejected. It then approached the Tribunal and the Tribunal agreed with the plea of the assessee that no liability of head office on proportionate basis was required to be reduced from the assets

while working out deduction under Section 80J. Hence this question has been referred .

A similar question arose for decision in I.T.A. No. 3 of 1997 decided on 8.7.1997 and connected matters where the question was whether the assessee was entitled to deduction under Section 80J for the six units on the capital employed without reducing the same by the amount of loans raised from the head office. The contention of the revenue was rejected by the Court. Both the parties admitted that this case is squarely covered by the decision rendered in the aforesaid case. Consequently, the reference is answered in favour of the assessee and against the revenue.

A copy of this judgment under the signature of the Registrar General of this Court be forwarded to the Tribunal.

(Deepak Gupta), A.C. J.

27th November, 2007 **(V.K.Ahuja),J.**
(BSS)